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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Debbie Morgan
Department of Commerce, Community and Economic Development

FROM: April Simpson, Office of the Lieutenant Governor *AS*
465.4081

DATE: March 12, 2019

RE: Filed Permanent Regulations: Marijuana Control Board
Marijuana Control Board: Marijuana Onsite Consumption (3 AAC 306.370)

| | |
|------------------------|----------------|
| Attorney General File: | JU2017200548 |
| Regulation Filed: | 3/12/2019 |
| Effective Date: | 4/11/2019 |
| Print: | 230, July 2019 |

cc with enclosures: Linda Miller, Department of Law
Judy Herndon, LexisNexis

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF MARIJUANA CONTROL BOARD

The attached 17 pages of regulations, dealing with onsite consumption endorsements for marijuana licenses, are certified to be a correct copy of the regulation changes that the Marijuana Control Board adopted at its December 20, 2018 meeting, under the authority of AS 17.38.121 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

On the record, in considering public comments, the Marijuana Control Board paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: 1/8/19

Erika McConnell

Erika McConnell, Director
Alcohol and Marijuana Control Office

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on

MARCH 12, 20 19 at 12:33 PM., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Kevin Meyer

Lieutenant Governor

Effective: April 11, 2019.

Register: 230, July 2019.

3 AAC 306.015(d) is amended to read:

(d) The board will impose other conditions or restrictions on a license or endorsement issued under this chapter when it finds that it is in the interests of the public to do so.

(Eff. 2/21/2016, Register 217; add'l am 2/21/2016, Register 217; am 2/21/2019,

Register 229, am 4/11/2019, Register 230

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

3 AAC 306.025 is amended to read:

3 AAC 306.025. Application procedure. (a) An applicant must initiate a new marijuana establishment license or endorsement application on a form the board prescribes, using the board's electronic system.

(b) After initiating a new marijuana license or endorsement application, the applicant must give notice of the application to the public by

(1) posting a copy of the application, on the form the board prescribes, for 10 days at

(A) the location of the proposed licensed premises; and

(B) one other conspicuous location in the area of the proposed premises;

(2) publishing an announcement once a week for three consecutive weeks in a newspaper of general circulation in the area; in an area where no newspaper circulates, the applicant must arrange for broadcast announcements on a radio station serving the local area

where the proposed licensee seeks to operate twice a week for three successive weeks during triple A advertising time; the newspaper or radio notice must state

(A) the name of the applicant;

(B) the name and location of the proposed premises;

(C) the type of license or endorsement applied for along with a citation to a provision of this chapter authorizing that type of license or endorsement; and

(D) a statement that any comment or objection may be submitted to the board; and

(3) submitting a copy of the application on the form the board prescribes to

(A) the local government; and

(B) any community council in the area of the proposed licensed premises.

(c) After the applicant completes the notice requirements in (b) of this section and submits each remaining application requirement listed in 3 AAC 306.020, the applicant must pay the application and license fees set out in 3 AAC 306.100. The notice requirements in (b) of this section must be given within the 90 days preceding the submittal of all application requirements listed in 3 AAC 306.020 and the application and license fee.

(d) When the director receives an application for a marijuana establishment license or endorsement, the director shall determine if the application is complete. Any application for a marijuana establishment license or endorsement that the director receives without the application and license fee is incomplete. If the director determines the application is complete, the director shall immediately give written notice to;

(1) the applicant;

(2) the local government with jurisdiction over the applicant's proposed licensed premises;

(3) the community council if the proposed licensed premises are located within the boundary of a community council established by municipal charter or ordinance; and

(4) any nonprofit community organization that has requested notification in writing.

(e) If an application for a marijuana establishment license or endorsement is incomplete, the director shall notify the applicant by electronic mail at the address provided by the applicant and shall either

(1) return an incomplete application in its entirety; or

(2) request the applicant to provide additional identified items needed to complete the application.

(f) When the director informs an applicant that its application is incomplete as provided in (e) of this section, the applicant must complete the application not later than 90 days after the date of the director's notice. If an applicant fails to complete its application during the 90-day period after the director's notice, the applicant must file a new application and pay a new application fee to obtain a marijuana establishment license or endorsement.

(g) The director may, not less than 90 days after initiation of an application, inform an applicant by electronic mail at the address provided by the applicant that missing application requirements listed in 3 AAC 306.020 must be submitted within 90 days. If an applicant fails to submit all missing application requirements during the 90-day period after the director's notice, the applicant must file a new application and pay a new application fee to obtain a marijuana

establishment license. (Eff. 2/21/2016, Register 217; am 12/28/2017, Register 224;

am 2 / 21 / 2019 , Register 229 ; am 4 / 11 / 2019 , Register 230)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

3 AAC 306.060 is amended to read:

3 AAC 306.060. Protest by local government. (a) Not later than 60 days after the director sends notice of an application for a new marijuana establishment license, a new onsite consumption endorsement, renewal of a marijuana establishment license, renewal of an onsite consumption endorsement, license conversion, or transfer of a marijuana establishment license to another person, a local government may protest the application by sending the director and the applicant a written protest and the reasons for the protest. The director may not accept a protest received after the 60-day period. If a local government protests an application for a new or renewal license, a new or renewal onsite consumption endorsement, for a license conversion, or for a transfer of a license to another person, the board will deny the application unless the board finds that the protest is arbitrary, capricious, and unreasonable.

(b) A local government may recommend that the board approve an application for a new license, a new onsite consumption endorsement, renewal of a license, renewal of an onsite consumption endorsement, license conversion, or transfer of a license to another person subject to a condition. The board will impose a condition a local government recommends unless the board finds the recommended condition is arbitrary, capricious, and unreasonable. If the board imposes a condition a local government recommends, the local government shall

assume responsibility for monitoring compliance with the condition unless the board provides otherwise.

(c) If a local government determines that a marijuana establishment has violated a provision of AS 17.38, this chapter, or a condition the board has imposed on the licensee, the local government may notify the board. Unless the director finds that the local government's notice is arbitrary, capricious, and unreasonable, the director shall prepare the determination as an accusation against the licensee under AS 44.62.360 and conduct proceedings to resolve the matter as provided under 3 AAC 306.820. (Eff. 2/21/2016, Register 217; am 2 / 21 / 2019, Register 229; am 4 / 11 / 2019, Register 230)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 17.38.010 | AS 17.38.150 | AS 17.38.200 |
| | AS 17.38.070 | AS 17.38.190 | AS 17.38.900 |
| | AS 17.38.121 | | |

3 AAC 306.100 is amended to read:

3 AAC 306.100. Fees; refund. (a) The non-refundable application fee for a new marijuana establishment license, an application for license conversion, or an application to transfer a license to another person is \$1,000. **The non-refundable application fee for a new onsite consumption endorsement is \$1,000.**

(b) The non-refundable application fee for a license renewal application is \$600. If a renewal application is late as provided under 3 AAC 306.035(e), an additional non-refundable late renewal application fee is \$1,000. **The non-refundable application fee for renewal of an onsite consumption endorsement is \$600.**

(c) The non-refundable fee to request board approval of a change in a licensed marijuana establishment's business name, ownership, licensed premises diagram, operating plan, or proposed new marijuana product is \$250. A change fee does not apply to an application for transfer of a license or a transfer of controlling interest to another person.

(d) The annual license or endorsement fee, to be paid with each application for a new marijuana establishment facility license or endorsement and each license or endorsement renewal application is

- (1) for a retail marijuana store license, \$5,000;
- (2) for a limited marijuana cultivation facility license, \$1,000;
- (3) for a marijuana cultivation facility license, \$5,000;
- (4) for a marijuana concentrate manufacturing facility license, \$1,000;
- (5) for a marijuana product manufacturing facility license, \$5,000;
- (6) for a marijuana testing facility license, \$1,000;

(7) for an onsite consumption endorsement to a retail marijuana store license, \$2,000.

(e) The fee for a marijuana handler permit card is \$50.

(f) If the board denies an application for a license or endorsement, or for renewal of a license or endorsement, the board will refund the annual license or endorsement fee. The board will not refund a license or endorsement fee after the license or endorsement has been issued.

(g) Processing fees for late renewal after failure to pay taxes are as follows:

(1) if a licensee pays its delinquent tax after a local government protests renewal of the license, but before the board denies license renewal, \$200;

(2) if a licensee pays its delinquent tax after appealing the board's denial of a license renewal, but before a hearing officer is appointed to hear the applicant's appeal, \$500;

(3) if a licensee pays its delinquent tax after appealing the board's denial of a license renewal, but before the administrative hearing begins, \$5,000;

(4) if a licensee pays its delinquent tax after an administrative hearing that results in a hearing officer recommendation to deny the license renewal, \$10,000.

(h) The fee for a second or subsequent inspection for a new marijuana establishment is \$500. The fee applies to an inspection requested after a marijuana establishment fails a preliminary inspection, and is not issued a license. The director may waive the fee upon submission of a written request. (Eff. 2/21/2016, Register 217; am 7/19/2017, Register 223; am 8/11/2018, Register 227; am 2 / 21 / 2019, Register 229; am 4 / 11 / 2019, Register 230)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

3 AAC 306 is amended by adding a new section to read:

3 AAC 306.110. Endorsements generally. (a) An endorsement expands the boundaries of a licensed premises or the authorized activities of the licensed business.

(b) Only the board may issue an endorsement.

(c) An endorsement is valid only in conjunction with a license. An endorsement may only be transferred to another person if the license for which the endorsement was issued is also transferred to that person. An endorsement expires if the license expires or the license is

revoked. An endorsement is suspended if the license is suspended. (Eff. 4 / 11 / 2019,

Register 230)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

3 AAC 306.200 is amended to read:

3 AAC 306.200. Local options. (a) If a majority of the persons voting on the question vote to approve the option, or if a local government's assembly or city council passes an ordinance to the same effect, the local government shall adopt a local option to prohibit

(1) the sale or importation for sale of marijuana and any marijuana product;

(2) the operation of any marijuana establishment, including one or more of the

following license or endorsement types:

(A) a retail marijuana store;

(B) a marijuana cultivation facility;

(C) a marijuana product manufacturing facility;

(D) a marijuana testing facility;[.]

(E) an onsite consumption endorsement to a marijuana retail store

license;

(3) specific operational characteristics of an onsite consumption endorsement to a marijuana retail store license, including consumption by smoking or vaping, or outdoor consumption.

(b) A ballot question to adopt a local option under this section must at least contain language substantially similar to: "Shall (name of local government) adopt a local option to prohibit (local option under (a) of this section)? (yes or no)."

(c) The ballot for an election on the options set out in (a)(2) of this section must include a brief explanation of the activity that each license or endorsement type on the ballot may carry out.

(d) If a local government dissolves under AS 29.06.450, any marijuana establishment license issued to that local government expires when the local government dissolves.

(e) A local government may not prohibit the personal use and possession of marijuana and marijuana products as authorized under AS 17.38.020.

(f) Nothing in 3 AAC 306.200 - 3 AAC 306.260 precludes a local government from applying for a marijuana establishment license or endorsement under other provisions of this chapter. (Eff. 2/21/2016, Register 217; am 4 / 11 / 2019, Register 230)

Authority: AS 17.38.020 AS 17.38.200 AS 17.38.900
AS 17.38.190 AS 17.38.210

3 AAC 306.250 is amended to read:

3 AAC 306.250. Effect on licenses of restriction on sale. If a majority of the voters vote under 3 AAC 306.200(a) to prohibit sale of marijuana and marijuana products or the operation of marijuana establishments, or if the assembly or city council passes an ordinance to the same effect, the board will not issue, renew, or transfer to another person a license for a marijuana establishment, or issue or renew an endorsement, with premises located within the boundary of the local government. A license for a marijuana establishment or endorsement

within the boundary of the local government is void 90 days after the results of the election are certified, or after the effective date of an ordinance to the same effect if the local government opted out by ordinance. A license or endorsement that expires during the 90 days after the certification of a local option election, or during the period of time between passage of an ordinance to the same effect and the effective date of that ordinance, may be extended until it is void under this section, by payment of a prorated portion of the annual license or endorsement fee. (Eff. 2/21/2016, Register 217, am 7/27/2017, Register 223; am 4 / 11 / 2019, Register 230)

Authority: AS 17.38.020 AS 17.38.200 AS 17.38.900
 AS 17.38.190 AS 17.38.210

3 AAC 306.310(b) is amended to read:

(b) A licensed retail marijuana store may not

(1) conduct business on or allow a consumer to access the retail marijuana store's licensed premises between the hours of 5:00 a.m. and 8:00 a.m. each day;

(2) allow a person to consume marijuana or a marijuana product on the retail marijuana store's licensed premises, except as provided in 3 AAC 306.305(a)(4);

(3) offer or deliver to a consumer, as a marketing promotion or for any other reason,

(A) free marijuana or marijuana product, including a sample; or

(B) alcoholic beverages, free or for compensation; or [.]

(4) allow intoxicated or drunken persons to enter or to remain on the licensed premises.

(Eff. 2/21/2016, Register 217; am 4 / 11 / 2019, Register 230)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

3 AAC 306.355 is amended to read:

3 AAC 306.355. Limit on quantity sold. (a) A retail marijuana store may not sell to any one person per day[IN A SINGLE TRANSACTION]

- (1) more than one ounce of usable marijuana;
- (2) more than seven grams of marijuana concentrate for inhalation, or
- (3) marijuana or marijuana products if the total amount of marijuana, marijuana products, or both marijuana and marijuana products sold contains more than 5,600 milligrams of THC.

(b) These limits include marijuana or marijuana product sold for onsite consumption under 3 AAC 306.370(a)(2). (Eff. 2/21/2016, Register 217; am 4 / 11 / 2019, Register 230)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

3 AAC 306 is amended by adding a new section to read:

3 AAC 306.370. Onsite consumption endorsement for retail marijuana stores. (a)

Unless prohibited by local or state law, a freestanding licensed retail marijuana store with an approved onsite consumption endorsement is authorized to

(1) sell marijuana and marijuana products, excluding marijuana concentrates, to patrons for consumption on the licensed premises at the time of purchase only in an area designated as the marijuana consumption area and separated from the remainder of the premises, either by a secure door and having a separate ventilation system, or by being outdoors in compliance with (c)(4) below;

(2) sell for consumption on the premises

(A) marijuana bud or flower in quantities not to exceed one gram to any one person per day;

(B) edible marijuana products in quantities not to exceed 10 mg of THC to any one person per day; and

(C) food or beverages not containing marijuana or alcohol; and

(3) allow a person to remove from the licensed premises marijuana or marijuana product that has been purchased on the licensed premises for consumption under this section, provided it is packaged in accordance with 3 AAC 306.345.

(b) A licensed retail marijuana store with an approved onsite consumption endorsement may not

(1) sell marijuana concentrate for consumption in the marijuana consumption area or allow marijuana concentrate to be consumed in the marijuana consumption area;

(2) allow any licensee, employee, or agent of a licensee to consume marijuana or marijuana product, including marijuana concentrate, during the course of a work shift;

(3) allow a person to consume tobacco or tobacco products in the marijuana consumption area;

(4) allow a person to bring into or consume in the marijuana consumption area any marijuana or marijuana product that was not purchased at the licensed retail marijuana store;

(5) sell, offer to sell, or deliver marijuana or marijuana product at a price less than the price regularly charged for the marijuana or marijuana product during the same calendar week;

(6) sell, offer to sell, or deliver an unlimited amount of marijuana or marijuana product during a set period of time for a fixed price;

(7) sell, offer to sell, or deliver marijuana or marijuana product on any one day at prices less than those charged the general public on that day;

(8) encourage or permit an organized game or contest on the licensed premises that involves consuming marijuana or marijuana product or the awarding of marijuana or marijuana product as prizes; or

(9) advertise or promote in any way, either on or off the premises, a practice prohibited under this section.

(c) A marijuana consumption area shall have the following characteristics:

(1) the consumption area shall be isolated from the other areas of the retail marijuana store, separated by walls and a secure door, and shall have access only from the retail marijuana store;

(2) a smoke-free area for employees to monitor the marijuana consumption area;

(3) a ventilation system that directs air from the marijuana consumption area to the outside of the building through a filtration system sufficient to remove visible smoke, consistent with all applicable building codes and ordinances, and adequate to eliminate odor at the property line;

(4) if outdoors, be found by the board to be compatible with uses in the surrounding area through evaluation of

(A) neighboring uses;

(B) the location of air intake vents on neighboring buildings;

(C) a sight-obscuring wall or fence around the outdoor marijuana consumption area;

(D) objections of property owners, residents, and occupants within 250 linear feet or the notification distance required by the local government, whichever is greater; and

(E) any other information the board finds relevant.

(d) An applicant for an onsite consumption endorsement must file an application on a form the board prescribes, including the documents and endorsement fee set out in this section, which must include

(1) the applicant's operating plan, in a format the board prescribes, describing the retail marijuana store's plan for

(A) security, in addition to what is required for a retail marijuana store, including:

(i) doors and locks;

(ii) windows;

(iii) measures to prevent diversion; and

(iv) measures to prohibit access to persons under the age of 21;

(B) ventilation. If consumption by inhalation is to be permitted, ventilation plans must be

(i) signed and approved by a licensed mechanical engineer;

(ii) sufficient to remove visible smoke; and

(iii) consistent with all applicable building codes and ordinances;

(C) monitoring overconsumption;

(D) unconsumed marijuana, by disposal or by packaging in accordance with 3 AAC 306.345; and

(E) preventing introduction into the marijuana consumption area of marijuana or marijuana products not sold by the retail marijuana store, and marijuana or marijuana products not sold specifically for onsite consumption;

(2) the applicant's detailed diagram of the marijuana consumption area which must show the location of

(A) the licensed premises of the retail marijuana store;

(B) serving area or areas;

(C) ventilation exhaust points, if applicable;

(D) the employee monitoring area;

(E) doors, windows, or other exits; and

(F) access control points;

(3) the title, lease, or other documentation showing the applicant's sole right of possession of the proposed marijuana consumption area, if the area is not already part of the approved licensed premises for the retail marijuana store;

(4) an affidavit that notice of an outdoor marijuana consumption area has been mailed to property owners, residents, and occupants of properties within 250 linear feet of the boundaries of the property on which the onsite consumption endorsement is proposed, or the notification distance required by the local government, whichever is greater.

(e) The retail marijuana store holding an onsite consumption endorsement under this chapter shall

(1) destroy all unconsumed marijuana left abandoned or unclaimed in the marijuana consumption area in accordance with the operating plan and 3 AAC 306.740;

(2) monitor patrons in the marijuana consumption area at all times, specifically for overconsumption;

(3) display all warning signs required under 3 AAC 306.360 and 3 AAC 306.365 within the marijuana consumption area, visible to all consumers;

(4) provide written materials containing marijuana dosage and safety information for each type of marijuana or marijuana product sold for consumption in the marijuana consumption area at no cost to patrons;

(5) package and label all marijuana or marijuana product sold for consumption on the premises as required in 3 AAC 306.345; and

(6) comply with any conditions set by the local government or placed on the endorsement by the board.

(f) The holder of an onsite consumption endorsement must apply for renewal annually at the time of renewal of the underlying retail marijuana store license. (Eff. 4 / 11 / 2019, Register 230)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

3 AAC 306.990(b) is amended to add the following subsections:

(41) “drunken person” has the meaning given in AS 04.21.080(b)(9);

(42) “freestanding” has the meaning given in AS 18.35.301(i)(1);

(43) “intoxicated” has the meaning given in AS 11.81.900(b)(34);

(44) “marijuana consumption area” means a designated area within the licensed premises of a retail marijuana store that holds a valid onsite consumption endorsement, where marijuana and marijuana products, excluding marijuana concentrates, may be consumed.

(45) “retail marijuana store premises” means an area encompassing both the retail marijuana store and any marijuana consumption area.

(46) “sight-obscuring wall or fence” means a wall or fence, including any gates, constructed of solid material and a minimum of six feet in height. (Eff. 2/24/2015, Register 213; am 2/21/2016, Register 217; am 10/11/2017, Register 224; am 8/11/2018, Register 227; am 4 / 11 / 2019, Register 230)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

MEMORANDUM

State of Alaska
Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

Date: February 28, 2019

File No.: JU2017200548

Tel. No.: 465-3600

From: Susan R. Pollard *SRP*
Chief Assistant Attorney General
and Regulations Attorney
Legislation and Regulations Section

Re: Marijuana Control Board:
Marijuana Onsite Consumption
(3 AAC 306.370)

The Department of Law has reviewed the attached regulations of the Marijuana Control Board against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. The regulations implement standards for onsite consumption of marijuana (excluding concentrates) in a freestanding licensed retail marijuana store with an endorsement. An endorsement is not a separate license for a retail marijuana store; it is a separate authorization on top of a retail marijuana store license.

The subject of these regulations was considered by the board for approximately two years (and 11 public meetings). Our review addresses whether the procedural steps were followed and whether the regulations are consistent with the authorizing statute and reasonably necessary to carry out its purpose. AS 44.62.030 and 44.62.060 (review of regulations for legality, constitutionality, and consistency with other regulations). We also address federal law in relation to the proposed regulations. AS 44.62.020 ("To be effective, each regulation adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.") *Davis v. State*, 235 P.3d 1017, 1020 (Alaska App. 2010); *Beran v. State*, 705 P.2d 1280, 1287 (Alaska App. 1985).

Procedural steps. The proposed regulations were published on August 23, 2018; the notice stated the board was considering regulations for onsite consumption endorsements for retail marijuana establishments. The board accepted written and oral comments, with oral comments occurring at a hearing on December 19, 2018. The regulations were adopted by the Marijuana Control Board after the close of the public comment period.

The August 23, 2018 public notice gives notice that the board would consider onsite marijuana consumption endorsements for retail marijuana establishments. The board took written and oral comments. The board adopted the regulation at its December 20, 2018 meeting. Further, the public notice and the January 8, 2019 certification of adoption order states that this action is

not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

Consistency with authorizing statute. The board is authorized to propose and adopt regulations. Further, while marijuana consumption “in public” is illegal (AS 17.38.040) consumption within regulated, licensed premises is anticipated; the board has statutory authority to make changes to the area of a licensed premises “necessary to ensure control over the sale and consumption of marijuana on the premises.” AS 17.38.121(c). Under current regulation, “in public” does not “include an area on the premises of a licensed retail marijuana store designated for onsite consumption.” 3 AAC 306.990(a)(5)(C). The board further provides in these regulations that marijuana consumption is limited to a “marijuana consumption area within the licensed premises of a retail marijuana store that holds a valid onsite consumption endorsement.” 3 AAC 306.990(b)(44).

Consumption of marijuana in a licensed premises excludes marijuana concentrates (3 AAC 306.990(b)(44)), but envisions that some consumption may be through smoking marijuana or a marijuana product. Accordingly, we considered AS 18.35.301, which addresses public health law by prohibiting smoking tobacco in certain places, but the statute provides an exception for smoking “in an establishment licensed under AS 17.38 that is freestanding if the smoking is in accordance with regulations adopted by the Marijuana Control Board created under AS 17.38.080.” AS 18.35.301(h)(3). “Freestanding” means a building that is not supported by another structure and does not share ventilation or internal airspace with an adjoining structure and smoke from the building cannot travel into the adjoining structure. AS 18.35.301(i)(1). The regulations proposed here adopt this definition of “freestanding” in 3 AAC 306.990(b)(42).

In short, we find that the state statutes provide the board with necessary regulatory authority, and anticipate onsite consumption of marijuana, in a freestanding building.

Reasonably necessary to carry out the statutory purpose. Here we consider if the regulation is reasonable and not arbitrary. *Kelly v. Zamarello*, 486 P.2d 906 (Alaska 1971). Initially we note that the board considered the issue of onsite consumption for approximately two years, including approximately 11 meetings of substantive discussion about onsite consumption. The result is a detailed regulation, 3 AAC 306.370, onsite consumption endorsement for retail marijuana stores, to set the standards for onsite consumption. We are confident the record reflects that the board engaged in reasoned decision making. *See, Alaska Fish & Wildlife Conservation Fund v. State*, 347 P.3d 97 (Alaska 2015).

Specifically, the section limits consumption endorsements to stores that are freestanding, and where not otherwise prohibited by local or state law. 3 AAC 306.370(a). A marijuana store with a consumption endorsement is authorized to sell marijuana products including limited quantities of bud or flower or products not to exceed 10 mg of THC and *not including concentrates*, for consumption in a designated area that is separated from the rest of the store by a secure door and having a separate ventilation system or that is outdoors. 3 AAC 306.370(a)(1) and (2). The store may sell food or beverages not containing marijuana or alcohol (3 AAC 306.370(a)(2)(C)) and may allow customers to take away from the premises product that they

have purchased for consumption on the premises so long as it is packaged properly. 3 AAC 306.370(a)(3). The section provides that a store with an endorsement may not:

- (1) sell concentrate for consumption in the consumption area or allow it to be consumed in the consumption area;
- (2) allow consumption by employees while on the job;
- (3) allow tobacco consumption;
- (4) allow offsite purchases to be consumed in the consumption area;
- (5) offer “happy hour” type discounts;
- (6) offer “all-you-can-eat” type deals;
- (7) offer “in-house” type discounts;
- (8) offer or encourage games or contests that involve marijuana consumption or awarding of marijuana as prizes; or
- (9) advertise any prohibited practice, whether on or off the premises.

In addition, this section sets out the physical characteristics of a marijuana consumption area. 3 AAC 306.370(c). It must be accessible only from inside the store but must be isolated from the rest of the store, have a smoke-free area from which employees can monitor the consumption area, and have a ventilation system that directs air outside and removes visible smoke and odor at the property line. 3 AAC 306.370(c)(1)-(3). If the consumption area is outdoors, it must be found by the board to be compatible with uses in the surrounding area. 3 AAC 306.370(c)(4). This paragraph requires at least the consideration of a sight-obscuring wall or fence around the area and consideration of the objections of neighbors.

Obtaining an endorsement for onsite consumption requires an applicant to hold a license for a retail marijuana store. To apply for an endorsement to allow onsite consumption on the licensed premises, the applicant must show plans for security, ventilation, monitoring consumption, disposition of unconsumed marijuana, and preventing introduction of product not purchased onsite. 3 AAC 306.370(d)(1). In addition, the application must include a detailed diagram of the consumption area, ventilation exhaust points, the employee monitoring area, and access control points, as well as proof of possession of the property and proof that notice of any outdoor consumption area has been given to nearby property owners. 3 AAC 306.370(d)(2)-(4). Subsection (c) requires an endorsement holder to destroy all unconsumed product left by customers, monitor consumption, display warning signs required of stores, provide dosage and safety information for each product that is sold for consumption, ensure that all product is packaged properly, and comply with all conditions set by local government or the board. Finally, onsite endorsements must be renewed annually. 3 AAC 306.370(f).

Local governments can adopt a local option to prohibit onsite consumption endorsements, just as they can now opt out of specific license types (stores, cultivation facilities, manufacturing facilities and testing facilities) (3 AAC 306.200(a)(2)); with the proposed amendments, they could also opt to prohibit specific operational characteristics of an onsite consumption endorsement, including by smoking or vaping, or consuming outdoors. 3 AAC 306.200(a)(3); 3

AAC 306.250. Also, these proposed amendments would allow a local government to hold an endorsement if it has a retail store license. 3 AAC 306.200(f).

In our view, the regulations are reasonably necessary to assure onsite consumption is retained in the licensed premises of a freestanding building.

Federal law. Next, we address whether the regulations are problematic under federal law. Under Alaska law, some commercial marijuana activity is authorized under AS 17.38, including onsite consumption on a licensed premises; for the reasons explained above these regulations are authorized by state law. But marijuana cultivation, use, and possession remains illegal under federal law. The regulations cannot resolve this conflict. Previously, the federal government issued guidance for states with legalized marijuana suggesting that the federal government would be more inclined to leave enforcement of criminal law applicable to commercial marijuana to states where the state has a robust regulatory system.¹ Accordingly, our state's marijuana regulation has been developed with attention to former key federal guidance, including regulatory action to ensure safe and clear packaging, regulations to ensure marijuana is not accessible to persons under age, and robust vetting requirements for licensees. The current regulations appear to establish robust requirements for onsite consumption designed to ensure limited onsite use, and with restrictions (such as requirements for security) designed to ensure that marijuana consumption occurs only by those of legal age on a designated area of a licensed premise, remains on the premise, and includes only consumption of marijuana purchased at the licensed premise. Accordingly, we believe that the board has established restrictions to ensure compliance with state law.

SRP:lbp

cc: Erika McConnell, Director
Marijuana Control Board
Department of Commerce, Community, and Economic Development

Debbie Morgan, Regulations Contact
Department of Commerce, Community, and Economic Development

Jedediah Smith, Local Government Specialist
Alcohol and Marijuana Control Office
Department of Commerce, Community, and Economic Development

Harriet Dinegar Milks, Assistant Attorney General
Commercial, Fair Business, and Child Support Section

¹ James M. Cole, Deputy Attorney General, U.S. Dep't of Justice, *Memorandum for All United States Attorneys, Guidance Regarding Marijuana Enforcement* (Aug. 29, 2013; later withdrawn, Memorandum from Attorney General Jefferson B. Sessions III to All U.S. Attorneys (Jan. 4, 2018), <https://www.justice.gov/opa/press-release/file/1022196/download>.

NOTICE OF PROPOSED CHANGES TO THE REGULATIONS OF THE MARIJUANA
CONTROL BOARD REGARDING THE ADDITION OF AN ONSITE MARIJUANA
CONSUMPTION ENDORSEMENT TO THE RETAIL MARIJUANA LICENSE

The Marijuana Control Board proposes to adopt regulation changes in 3 AAC 306 of the Alaska Administrative Code, dealing with onsite marijuana consumption endorsements for retail marijuana establishments, including the following:

- (1) 3 AAC 306.015(d) is amended to add endorsements to board conditions or restrictions
- (2) 3 AAC 306.025 amends the application procedures
- (3) 3 AAC 306.060 amends the process for local government procedure
- (4) 3 AAC 306.100 amends fees and refund procedures
- (5) 3 AAC 306.110 adds a new section for endorsements
- (6) 3 AAC 306.200 amends the local option process
- (7) 3 AAC 306.250 amends the effect on licenses of restrictions on sale
- (8) 3 AAC 306.310 amends marijuana retail store restrictions
- (9) 3 AAC 306.355 amends limits on quantities sold
- (10) 3 AAC 306.370 adds a new section for onsite consumption endorsements for retail marijuana stores
- (11) 3 AAC 306.990(b) is amended to add relevant definitions

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to the Alcohol & Marijuana Control Office at 550 West 7th Avenue, Suite 1600, Anchorage, AK 99501. Additionally, the Marijuana Control Board will accept comments by electronic mail at amco.regs@alaska.gov. Comments may also be submitted through the Alaska Online Public Notice System by accessing this notice on the system and using the comment link. The comments must be received not later than 4:30 pm on November 1, 2018.

Oral comments may also be submitted at a hearing to be held on December 19, 2018, at 4805 Dr. MLK Jr. Avenue, Anchorage, AK 99507. The hearing will be held from 1 p.m. to 4 p.m. and might be extended to accommodate those present by 1 p.m. who did not have an opportunity to comment.

You may submit written questions relevant to the proposed action to the Marijuana Control Board by email at amco.regs@alaska.gov or at 550 West 7th Avenue, Suite 1600, Anchorage, AK 99501. The questions must be received at least 10 days before the end of the public comment period. The Alcohol & Marijuana Control Office will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact amco.regs@alaska.gov or (907) 269-0350 not later than October 20,

2018, to ensure that any necessary accommodation can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting the Alcohol & Marijuana Control Office at (907) 269-0350 or amco.regs@alaska.gov.

After the public comment period ends, the Marijuana Control Board will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. You should comment during the time allowed if your interests could be affected. Written comments received are public records and are subject to public inspection.

Statutory authority: AS 17.38.010; AS 17.38.070; AS 17.38.121; AS 17.38.150; AS 17.38.190; AS 17.38.200; AS 17.38.210; AS 17.38.300; AS 17.38.340; AS 17.38.900

Statutes being implemented, interpreted, or made specific: AS 17.38.070 AS 17.38.200 AS 17.38.210

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date: August 22, 2018

A handwritten signature in black ink that reads "Erika McConnell". The signature is written in a cursive, flowing style.

Erika McConnell, director

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Marijuana Control Board
2. General subject of regulation: Onsite Marijuana Consumption Endorsement
3. Citation of regulation (may be grouped): 3 AAC 306.015; 3 AAC 306.025; 3 AAC 306.060; 3 AAC 306.100; 3 AAC 306.110; 3 AAC 306.200; 3 AAC 306.250; 3 AAC 306.310; 3 AAC 306.355; 3 AAC 306.370; 3 AAC 306.990
4. Department of Law file number, if any: JU2017200548

5. Reason for the proposed action:

☐ Compliance with federal law or action (identify): _____

☐ Compliance with new or changed state statute

☐ Compliance with federal or state court decision (identify): _____

☒ Development of program standards

☐ Other (identify): _____

6. Appropriation/Allocation: \$0

7. Estimated annual cost to comply with the proposed action to:

A private person: \$0

Another state agency: \$0

A municipality: \$0

8. Cost of implementation to the state agency and available funding (in thousands of dollars):

| | Initial Year FY <u>18</u> | Subsequent Years |
|-------------------------------|------------------------------|---------------------|
| Operating Cost | <u>\$ 0</u> | <u>\$ 0</u> |
| Capital Cost | <u>\$ 0</u> | <u>\$ 0</u> |
| 1002 Federal receipts | <u>\$ 0</u> | <u>\$ 0</u> |
| 1003 General fund match | <u>\$ 0</u> | <u>\$ 0</u> |
| 1004 General fund | <u>\$ 0</u> | <u>\$ 0</u> |
| 1005 General fund/ program | <u>\$ 0</u> | <u>\$ 0</u> |
| Other (identify) | <u>\$ 0</u> | <u>\$ 0</u> |

9. The name of the contact person for the regulation:

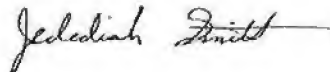
Name: Jedediah Smith
Title: Local Government Specialist
Address: 550 West 7th Ave, Suite 1600 Anchorage, AK 99501
Telephone: (907) 269-0350
E-mail address: amco.regs@alaska.gov

10. The origin of the proposed action:

☐ Staff of state agency
☐ Federal government
☐ General public
☐ Petition for regulation change
☒ Other (identify): Marijuana Control Board

11. Date: August 22, 2018

Prepared by:



Name (printed): Jedediah Smith
Title (printed): Local Government Specialist
Telephone: (907) 269-0350

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Erika McConnell, Director of the Alcohol and Marijuana Control Office, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to onsite consumption endorsement for marijuana licensees has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to every person who has filed a request for notice of proposed action with the state agency;
- (3) furnished to appropriate state officials;
- (4) furnished to interested persons;
- (5) furnished to the Department of Law, along with a copy of the proposed regulation;
- (6) furnished electronically to incumbent State of Alaska legislators;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1).

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (2), (4) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: 1/8/19

Erika McConnell

Erika McConnell, Director
Alcohol and Marijuana Control Office

Subscribed and sworn to before me at Anchorage, Alaska, on 1/8/19.



Jane Sawyer
Notary Public in and for the State of Alaska

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

Account #: 270221

ST OF AK/ALCOHOL AND MARIJUANA
CONTROL BOARD
550 W 7TH AVE #1600
ANCHORAGE AK 99501

Order#
Cost

0001426641
\$851.60

Product ADN-Anchorage Daily News
Placement 0300
Position 0301

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Sarah Jennett

being first duly sworn on oath deposes and says that he/she is a representative of the Anchorage Daily News, a daily newspaper. That said newspaper has been approved by the Third Judicial Court, Anchorage, Alaska, and it now and has been published in the English language continually as a daily newspaper in Anchorage, Alaska, and it is now and during all said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the annexed is a copy of an advertisement as it was published in regular issues (and not in supplemental form) of said newspaper on

August 23, 2018, October 01, 2018

and that such newspaper was regularly distributed to its subscribers during all of said period. That the full amount of the fee charged for the foregoing publication is not in excess of the rate charged private individuals.

Signed

Sarah Jennett

Subscribed and sworn to before me
this 2nd day of October, 2018

Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska

MY COMMISSION EXPIRES

2/23/2019

Notary Public
BRITNEY L. THOMPSON
State of Alaska
My Commission Expires Feb 23, 2019

NOTICE OF PROPOSED CHANGES TO THE REGULATIONS OF THE MARIJUANA CONTROL BOARD REGARDING THE ADDITION OF AN ONSITE MARIJUANA CONSUMPTION ENDORSEMENT TO THE RETAIL MARIJUANA LICENSE

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AFFIDAVIT OF ORAL HEARING

I, Erika McConnell, Director of the Alcohol and Marijuana Control Office, being sworn, state the following:

On December 19, 2018, at 1:00 p.m. at 4805 Dr. Martin Luther King Jr. Avenue, Anchorage, Alaska, the Marijuana Control Board presided over a public hearing held under AS 44.62.210 for the purpose of taking testimony in connection with the adoption of changes to onsite consumption endorsements for marijuana licenses.

Date: 1/8/19

Erika McConnell

Erika McConnell, Director
Alcohol and Marijuana Control Office

Subscribed and sworn to before me at Anchorage, Alaska, on 1/8/19.



Jane Sawyer

Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Erika McConnell, Director of the Alcohol and Marijuana Control Office, being duly sworn, state the following:

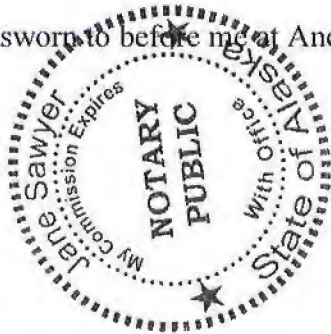
In compliance with AS 44.62.215, the Marijuana Control Board has kept a record of its use or rejection of factual or other substantive information that was submitted in writing and orally as public comment and that was relevant to the accuracy, coverage, or other aspect of the Marijuana Control Board regulation on onsite consumption endorsements for retail marijuana licenses.

Date: 1/8/19

Erika McConnell

Erika McConnell, Director
Alcohol and Marijuana Control Office

Subscribed and sworn to before me at Anchorage, Alaska, on 1/8/19.



Jane Sawyer

Notary Public in and for the State of Alaska

AFFIDAVIT OF BOARD ACTION

I, Erika McConnell, Director of the Alcohol and Marijuana Control Office, being duly sworn, state the following:

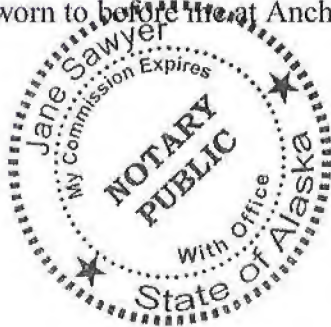
The attached motion dealing with onsite consumption endorsement regulations for marijuana licensees was passed by the Marijuana Control Board during its December 20, 2018, meeting.

Date: 1/8/19

Erika McConnell

Erika McConnell, Director
Alcohol and Marijuana Control Office

Subscribed and sworn to before me at Anchorage, Alaska, on 1/8/19.



Jane Sawyer

Notary Public in and for the State of Alaska



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Commerce, Community,
and Economic Development
ALCOHOL & MARIJUANA CONTROL OFFICE
550 West 7th Avenue, Suite 1600
Anchorage, AK 99501
Main: 907.269.0350

**Marijuana Control Board
Excerpt Draft Meeting Minutes
December 20, 2018
Third Judicial District
550 West 7th Avenue, Room 102
Anchorage, Alaska**

Board Members Present

*Mark Springer, Chair
Brandon Emmett
Loren Jones
Nicholas Miller*

Staff Present

*Erika McConnell
Mikal Milton*

Counsel Present

Harriet Milks

1. Onsite Consumption Endorsement

11:30am

TAB 14

Status: Public comment period closed November 1, 2018
Potential Board Actions: Vote to adopt; OR
Substantially amend and put out for public comment

*Brandon Emmett motions to adopt the regulation in the memorandum for onsite consumption.
Jeff Ankerfelt seconds.*

Brandon Emmett states that this matter has been under consideration since 2015, and that the idea has been contemplated by the legislature, endorsed by the municipality of anchorage and that with the body of knowledge he urges the board to adopt the regulations.

*Miller Yes
Jones No
Emmett Yes
Ankerfelt Yes
Springer No*

Motion passes 3-2